

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2401 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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ICHCHHIBEN WD/O MOHANBHAI MANGABHAI DAULIYA PATEL

Versus

COMMISSIONER OF POLICE

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Appearance:

MR SUNIL C PATEL for Petitioner

RULE SERVED for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 23/11/1999

ORAL JUDGEMENT

The Commissioner of Police, Surat passed an order on 19.2.99 in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-social Activities Act, 1985 (PASA for short) detaining the petitioner. The Detaining Authority passed the order on the ground that the petitioner was involved in bootlegging and was a bootlegger as defined in the PASA Act and that he behaves in a high handed manner to pursue his activities resulting in disruption of public order and therefore detention under PASA is the only remedy.

2. The petitioner challenges that order of detention on the ground that some of the papers supplied with the detention order are not legible and therefore the petitioner's right of making an effective representation is adversely affected.

3. Mr.S.C.Patel, Ld. Advocate appearing for the petitioner has restricted his arguments to this aspect alone.

4. The papers supplied to the petitioner alongwith the order of detention are demonstrated to be illegible by Mr.Patel and Mr.H.H.Patel, Ld.AGP also fairly conceded to this aspect. It is a settled proposition of law that if the documents relied upon by the Detaining Authority are not legible, it amounts to non-communication which would result into a denial of right of making any effective representation. This would therefore vitiate the order of detention passed by the Detaining Authority. In Pokhrajbhai Sohanbhai Tandel Vs. District Magistrate, 1992, reported in 1992 GLR 755, a Division Bench of this Court held that, if out of the copies of documents supplied to the detenu one copy of one document is found to be illegible, it would infringe the right of the detenu of making an effective representation and therefore the detention order is therefore liable to be set aside.

5. In view of the above legal & factual situation, the petition deserves to be allowed only on the ground of non-supply of legible copies, the factual aspect of which is now not disputed.

6. The petition is therefore allowed. The order passed by the Police Commissioner of Surat dated 19.2.99 is hereby quashed and set aside. The petitioner Ichchhiben sd/ of Mohanbhai be set at liberty forthwith if not required in any other case. Rule made absolute accordingly. No Costs.

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